

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

JAMES ALBERTIS JORDAN,	:	
	:	
Petitioner	:	
	:	
VS.	:	
	:	5:03-CR-6(HL)
UNITED STATES OF AMERICA,	:	
	:	
Respondent	:	<u>ORDER</u>

Before the Court is **JAMES ALBERTIS JORDAN'S** notice of appeal or, in the alternative, motion to file a notice of appeal out of time pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure (Tab # 62).

Petitioner pled guilty to possession with intent to distribute crack cocaine and a firearm offense, and was sentenced in June 2003 to 170 months' imprisonment. On June 7, 2004, the government moved to reduce petitioner's sentence pursuant to Federal Rule of Criminal Procedure 35(b)(1). The Court granted the government's Rule 35(b) Motion, reducing petitioner's sentence to 140 months' imprisonment. Although the Court signed that order on April 28, 2005, the order was not entered on the Court's docket until the following day, or April 29, 2005. Petitioner's notice of appeal, or motion to file an out of time appeal, dated May 9, 2005, was filed on May 13, 2005.

Under Rule 4(b) of the Federal Rules of Appellate Procedure, a criminal defendant's notice of appeal must be filed in the district court within 10 days of the entry of either the judgment or the order being appealed. *See* Fed. R.App. P. 4(b)(1)(A)(i); *see also* Fed. R. App. P. 26(a)(2) (requiring exclusion of Saturdays and Sundays in computing any time period less

than 11 days). Petitioner's Notice of Appeal stated that his appeal was for ineffective assistance of counsel. The Court assumes that petitioner's ineffective assistance claim has to do with the Rule 35(b) order entered on April 29, 2005. Therefore, petitioner's notice was filed no later than 10 days after the Court entered the Rule 35(b) order on the docket and is, therefore, timely. Accordingly, petitioner's motion for an out of time appeal is rendered moot.

Also before the Court is petitioner's motion to proceed *in forma pauperis* on appeal (Tab # 66). The Court has considered petitioner's trust fund statement and finds that he is unable to pay the appellate filing fee. Accordingly, petitioner's motion for leave to proceed IFP on appeal is hereby **GRANTED**.

SO ORDERED, this 14th day of July, 2005.

/s/ Hugh Lawson
HUGH LAWSON
UNITED STATES DISTRICT JUDGE

cr